

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ADALBERTO GOMEZ,

Plaintiff,
-against-

C & S WHOLESALE GROCERS, INC. and
THE STOP & SHOP SUPERMARKET COMPANY LLC,

PETITION FOR REMOVAL

**Jury trial demanded
ECF case**

Docket No.:

Defendant,

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Defendant, THE STOP & SHOP SUPERMARKET COMPANY LLC, petitioners for the removal of this action from the Supreme Court of the State of New York, County of Bronx, to the United States District Court, Southern District of New York, respectfully shows this Honorable Court:

FIRST: On or about February 11, 2021 the Plaintiff commenced a civil action against the above-named Defendant in the Supreme Court of the State of New York, County of Bronx, entitled:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ADALBERTO GOMEZ,

Plaintiff,
-against-

C & S WHOLESALE GROCERS, INC. and
THE STOP & SHOP SUPERMARKET COMPANY LLC,

Index No.: 802026/2021E

Defendant,

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A copy of the Summons and Complaint in this action is annexed hereto as ***Exhibit "A"*** and made a part hereof. On or about March 15, 2021, THE STOP & SHOP SUPERMARKET COMPANY LLC (hereinafter “STOP & SHOP”) timely interposed its Answer, a copy of which is annexed hereto as ***Exhibit "B"***. Codefendant C&S WHOLESALE GROCERS, INC. (hereinafter “C&S”) interposed its Answer, annexed hereto as ***Exhibit "C"***, and issue was joined. Defendant STOP & SHOP received the Plaintiff’s Verified Bill of Particulars on July 28, 2021 which is annexed hereto as ***Exhibit "D"***. Defendant STOP & SHOP received plaintiff’s responses to discovery, including a response to 3017 (c) Demand on July 28, 2021 which is annexed hereto as ***Exhibit "E"***. Upon information and belief, the foregoing constitutes all process, pleadings and orders allegedly served upon the parties in this action.

SECOND: This is an action of civil nature in which the District Courts of the United States have been given original jurisdiction in that there exists diversity of citizenship between the plaintiff and the defendant and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interests and costs. Accordingly, there exists jurisdiction in the District Court of the United States as provided in 28 U.S.C. §1332.

THIRD: Under the provision of 28 U.S.C. §1441, the right exists to remove this civil action from the Supreme Court of the State of New York, County of Bronx to the United States District Court for Southern District of New York, which embraces the place where this action is pending. In her complaint Plaintiff, ADALBERTO GOMEZ, seeks judgment as a result of personal injuries allegedly sustained on May 5, 2020. The occurrence at issue herein took place on the premises commonly known and identified as 961 east 174th Street Bronx, New York, more specifically the interior of said building used as a supermarket.

FOURTH: The action involves a controversy between citizens of different States. The

Plaintiff is and was at the commencement of the action, a citizen of New York State, Queens County. Defendant STOP & SHOP is a Foreign Limited Liability Company with its sole member being Ahold Delhaize U.S.A., Inc., a Delaware Corporation with its principal place of business located at 1365 Hancock Street, Quincy, Massachusetts 02169. Defendant C&S is a Foreign Corporation, incorporated in the State of Connecticut, with its principal place of business located at 7 Corporate Drive, Keene, New Hampshire, 03431. A copy of the Co-Defendant, C&S Wholesale Grocers, Inc.'s, incorporation filing documents, as *Exhibit "F"*.

FIFTH: Upon information and belief, Plaintiff's alleged amount in controversy will be claimed by the Plaintiff to exceed the \$75,000.00 threshold. Plaintiff's Complaint did not specify the amount of damages because under NY State CPLR Section 3017(c), a plaintiff in a personal injury matter in the Supreme Court of the State of New York is not permitted to assert the damages amount in the Complaint.

SIXTH: However, in Plaintiff's Response to CPLR Section 3017(c) Demand, Plaintiff claims damages in the amount of \$10,000,000.00 (Ten Million Dollars). *See Exhibit "E"*. While the foregoing is expressly denied by the Defendant, based on the Plaintiff's CPLR Section 3017 (c) response, the alleged amount in controversy is claimed to exceed \$75,000.00. Accordingly, there exists original jurisdiction in the District Courts of the United States as provided in 28 U.S.C. Section 1332.

SEVENTH: The instant Petition is being filed within thirty days of learning that the amount in controversy is claimed to exceed the Federal Court's jurisdictional limit in accordance with Fed. R. Civ. P. Section 1446(b). This action is also being removed within a year of commencement of the Action pursuant to Fed. R. Civ. P. Section 1446(b). No party to this action will be prejudiced by removing the Action.

EIGHTH: In accordance with the requirements of 28 U.S.C. Section 1446 Defendant attaches herewith and incorporates herein by reference copies of the following items served in this action:

- a. Plaintiff's Summons and Complaint against the Defendant for damages filed in the Supreme Court of the State of New York, County of Bronx bearing Index Number 802026/2021E (***Exhibit "A"***).
- b. The Answer interposed on behalf of Defendant STOP & SHOP (***Exhibit "B"***).
- c. The Answer interposed on behalf of Defendant C&S (***Exhibit "C"***)
- d. The Plaintiff's Bill of Particulars (***Exhibit "D"***).
- d. The Plaintiff's Discovery Responses, including Response to CPLR Section 3017 (c) Demand (***Exhibit "E"***).
- e. Defendant C&S's Documents of Incorporation (***Exhibit "F"***).

NINTH: By reason of the forgoing, The Defendant desires and is entitled to have this action removed from the Supreme Court of the State of New York, County of Bronx to the United States District Court for the Southern District of New York, such being the District where this suit is pending.

TENTH: Concurrent with the filing of service and Petition for removal, Defendants are serving this Petition for removal upon the plaintiff's attorney and filing a copy of this Petition for removal with the Clerk of the Court for the Supreme Court of the State of New York County of Bronx.

WHEREFORE, Defendant, THE STOP & SHOP SUPERMARKET COMPANY LLC, prays that the above-entitled action now pending against it in the Supreme Court of the State of New York, County of Bronx. be removed from that Court to the United States District Court for the Southern District.

Dated: Garden City, New York
August 30, 2021

Yours, etc.,



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